UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

CHINATOWN CARTING CORP.	
AND	**CASES**
	2-CA-34613
LOCAL 813, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO	**2-CA-35306** **2-CA-35495**
CHINATOWN CARTING CORP.	
AND	**2-CA-35621**
DOMINGO HYNES	

Margit Reiner Esq., Counsel for the
General Counsel

DECISION

Statement of the Case

Raymond P. Green, Administrative Law Judge. I heard this case in New York, New York on July 22 and 23 and August 12, 2003.

The charge and amended charge in 2-CA-34613 were filed on May 16 and July 25, 2002. A Complaint in 2-CA-34613 was issued on December 26, 2002 and the postal return receipt was signed by Wayne Tragni, one of the owners. The Respondent did not file an Answer to this Complaint.

The charge and amended charges in 2-CA-35306 were filed on February 14, March 7, March 19 and April 16, 2003. The original charge was mailed to Mulligan Lane and the amended charges were mailed to 44 North Saw Mill River Road. [1] On May 16, 2003 a Consolidated Complaint covering the charges in 2-CA-34613 and 2-CA-35306 was issued by the Regional Director and mailed to the Respondent at 72 Mulligan Lane, Irvington, New York. On May 30, 2003, the Respondent by an attorney, Timothy P. Coon, filed an Answer to this Consolidated Complaint, where among other things, he admitted that the Respondent was an enterprise engaged in the carting business and whose business met the Board's standards for asserting jurisdiction. [2]

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[1] On July 21, 2003, the Respondent by its Counsel, in response to a subpoena requesting the locations where the Respondent conducted its business, stated:

> Carting further responds that prior to January 1, 2003, its principle place of business was 52 Mulligan Lane, Irvington New York and that from about January 1, 2003, through the present date, its principle place of business has been 44 N. Saw Mill River Road, Elmsford New York which is the residence of Damon Tragni.

[2] The Union's witnesses testified that they met with Wayne Tragni, one of the owners and attorney Timothy Coon on April 10, 2003, at the latter's office in Westchester to talk about signing a new collective bargaining

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The charge in 2-CA-35495 was filed on May 13, 2003. On June 25, 2003, an Amended Consolidated Complaint was issued which added allegations contained in 2-CA-35495. This Amended Consolidated Complaint was mailed to the Respondent at 44 North Saw Mill River Road and the postal return receipt shows that it was received at that address. On July 9, 2003, the Respondent's attorney, Coon, filed an Answer to this Amended Consolidated Complaint.

Thereafter, on July 9, 2003, another charge was filed in 2-CA-35621 and a Complaint based on that charge was served on the Respondent on July 25, 2003. At the resumption of the hearing on August 12, 2003, I granted the General Counsel's Motion to Consolidate that Complaint with the previously Consolidated cases. The Respondent did not file an Answer to this new Compliant.

In substance, the allegations are as follows:

1. That since at least December 1, 1999, the Respondent has recognized the Union and that this recognition was embodied in a collective bargaining agreement that ran from December 1, 1999 through July 31, 2002. The unit covered by that contract was;

> All chauffeurs, helpers, mechanics, and welders of the Employer, except those employees not eligible for membership in the Union in accordance with the provisions of the Labor Management Relations Act of 1947 as amended, with respect to wages, hours and other working conditions. The area of work includes, but not by way of limitation, loading and/or removing garbage, rubbish, cinders, ashes, waste materials, building debris and similar products.

2. That on or about September 18, 2002, the Respondent executed an agreement whereby it agreed to be bound to the terms and conditions of the successor agreement negotiated between the Union and another company called Waste Management.

3. That on or about October 30, 2002 the Union and Waste Management Inc., completed negotiations for an agreement and that on or about April 24, 2002, the Union requested the Respondent to execute a collective bargaining agreement based on the Waste Management agreement.

4. That at all times since April 24, 2002, the Respondent has refused to execute the agreement with the Union.

5. That since on or about April 24, 2002, the Respondent has refused the Union's request for a list of its employees with their dates of hire, as requested by the Union on April 14, 2002.

6. That on or about May 10, 2002, the Respondent by Wayne Tragni, via telephone, threatened employees with discharge if they joined the Union.

7. That on or about May 11, 2002, the Respondent by Wayne Tragni, interrogated employees about their union membership.

8. That on or about May 11, 2002, the Respondent by Wayne Tragni, promised wage increases if employees refrained from joining the Union

9. That on or about May 11, 2002, the Respondent by Wayne Tragni, threatened employees with discharge for supporting the Union.

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agreement.

10. That in early March 2003, the Respondent, by Wayne Tragni, interrogated employees about their union membership.

11. That in early March 2003, the Respondent, for discriminatory reasons, rescinded a previous job offer made to Domingo Hynes.

12. That on or about March 10, 11 and 15, 2003, the Respondent, by Wayne Tragni, threatened employees with discharge, plant closure and other unspecified reprisals for supporting the Union.

13. That on or about March 11, 2003, the Respondent, for discriminatory reasons, discharged Don Blyden.

14. That on or about March 15, 2003, the Respondent, for discriminatory reasons, refused to pay Don Blyden the wages that he earned for the period March 12-13, 2003.

15. That on or about March 14, 2003, the Respondent, for discriminatory reasons, discharged Jon Sarach and failed to pay him the wages he earned for working on March 15, 2003.

16. That on or about May 2, 2003, the Respondent, for discriminatory reasons, discharged George Siao and failed to pay him for wages for having worked from April 27 through May 2, 2003.

17. That on or about May 10, 2003, the Respondent by Damian Tragni, a corporate officer, threatened employees with discharge if they joined the Union.

The Hearing opened in these cases on July 22, 2003 and the General Counsel informed me that she had received a phone call from the Respondent's attorney who advised her that neither he nor the Respondent would appear. In this respect, the hearing went forward without any representative of the Respondent being present, albeit it is noted that Damon Tragni, an owner who is no longer active in the business, was subpoened by the General Counsel and appeared with his own counsel. He testified about the ownership, structure, and history of the Company and also with respect to its location and the receipt of certain of the charges through the mail.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the brief filed, I make the following

Findings of Fact

I. Jurisdiction

The Answer to the Amended Consolidated Complaint admits and I find that the Respondent, in the course and conduct of its annual business operations, (a) purchases and receives goods and materials valued in excess of $50,000 directly from suppliers located outside the State of New York, and (b) provides services valued in excess of $50,000 to entities located within the State of New York that themselves meet the direct commerce standards of the Board. According, I conclude that the Respondent is an employer engaged in interstate commerce with the meaning of Section 2(2), (6) and (7) of the Act, inasmuch as it meets the Boards direct inflow and indirect outflow standards for asserting jurisdiction. *Siemons Mailing Service*, 122 NLRB 81 (1959).

II Labor Organization Status

Based on the testimony of Nathaniel Pinkney, a Union business agent, I conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act. In this regard, Pinkney testified that

the Union represents employees in the sanitation industry; that it has a constitution and bylaws pursuant to which its members participate in union affairs; and that it negotiates collective bargaining agreements with about 500 to 600 companies.

III Service of the Charges

The charge and the amended charge in 2-CA-34613 were mailed to the Respondent at 72 Mulligan Lane in Irvington, New York on May 22 and July 26, 2002. Damon Tragni was called to testify by the General Counsel and he testified that he is one of the Company's owners and that until January 2003 he handled the Company's administrative affairs. He testified that his home address was 52 Mulligan Lane and that this address was used by the business. Tragni testified that the mail carrier was aware of the name of the Company and its address and that mail incorrectly addressed to 72 Mulligan Lane was delivered to him.

Further, Geoffrey Dunham, the Board agent assigned to investigate this charge testified that he contacted Wayne Tragni, another of the company's owners and that he faxed the charge to Wayne Tragni after he was given his fax number. The evidence shows that this fax transmission was received on July 2, 2002.

Dunham also testified that he learned that the Respondent was represented by an attorney named Brian Rafferty and that he faxed a copy of the amended charge to Rafferty on October 30, 2002. (Damon Tragni testified that Rafferty was in fact retained as counsel by the Respondent at that time. Timothy Coon took over later.)

In my opinion, the evidence shows that the charge in 2-CA-34613 was received by the Company when it was received by Damon Tragni in May 2002. I also conclude that once the principles or the Company and or its attorney consented to receive service of the charge by facsimile transmission, both and the amended charges were successfully served. See Section 102.14 of the Board's Rules and Regulations.

The original, first and second amended charges in 2-CA-35306 were respectively mailed to the Company at 72 Mulligan Lane, Irvington, New York on February 20, March 13 and March 26, 2003. Copies of the second and third amended charge were mailed to the Company's new address at 44 North Saw Mill River Road, Elmsford, New York on April 9 and April 22, 2003.

The charge in 2-CA-35621 was mailed to the Company on July 9, 2003 at its address at 44 N. Saw Mill River Road, Elmsford, New York. And the Complaint in that case was mailed to the Company at the foregoing address and to its attorney, Timothy Coon, on July 25, 2003. The Respondent did not file an Answer to this Complaint.

The testimony of Damon Tragni, Jeffrey Dunham and the documentary evidence demonstrated that the charges and the corresponding Complaints were either actually received in the mail or by facimile transmission, and that they were mailed to the proper addresses. I therefore conclude that the charges and amended charges in all of these cases were properly served and received by the Respondent. Accordingly, I conclude that the Respondent was given and received notice of the allegations made against it by the Union.

IV Alleged Unfair Labor Practices

(a) History of Collective Bargaining

The Company is a small business engaged in hauling trash. During the relevant period of time, it

had five trucks, one of which was mainly kept as a spare. One of the trucks was used to pick up cardboard for recycling and this truck was normally manned by one driver and one helper. The other trucks were used to pick up garbage and they normally were manned by one driver and one or two helpers. Basically their area of operation was in Chinatown New York.

The Company was originally owned by Nicholas and Irene Tragni. For estate tax reasons, the Tragni parents, each of whom owned 50% of the stock, transferred 98 % of their shares to their four sons in 1992. When Mr. Tragni died in 1999, his wife Irene inherited his 1% share and the sons who owned the remaining shares started to take over the operation of the business. This was completed in 2002 when the mother died. From that point, the four sons each had a 25% share of the business. Wayne Tragni became the Company's President who, in addition to driving a truck, also was in charge of hiring, firing and directing the work force. Damon Tragni, who has since disassociated himself from the Company, was the treasurer and he took care of the administrative side of the business. The two other brothers, Peter and Nick Tragni, mainly drove trucks.

According to Damon Tragni, the Company had a long-standing relationship with the Union going back to the time when his father was still alive and running the business. In this regard, the evidence is that some of the employees, including the Tragni sons, were members of the Union and that they received their medical insurance benefits through the Union. However, the evidence also shows that from as early as 1995, the Company had a practice of employing people as drivers or helpers and keeping their names secret from the Union so as to be able to pay them in cash, at rates of pay that were below those contained in the applicable collective bargaining agreements. Also, the Company did not make payments on their behalf to the various benefit funds provided for in the labor agreements. [3]

Indeed, the evidence shows that on many occasions, employees were told by Wayne Tragni that if they were approached by union representatives while on a truck, they should get off, or if confronted by an agent, assert that they were not employed by Chinatown Carting. Moreover, the credible evidence is that these employees were told, on numerous occasions, that they could not work for the Company if they joined the Union. Thus, for a period of time, the Union and the Employer played a game of cat and mouse with each other; the Union's representatives trying to contact the Company's employees while they drove around Chinatown at night; and the Employer' supervisors telling employees to absent themselves if union agents appeared on the scene.

The last contract between the Union and the Employer expired on July 31, 2002. However, in September 2002, Wayne Tragni executed an agreement which stated that the Company would be bound by a successor collective bargaining agreement negotiated between the Union and another employer called Waste Management of New York. (Essentially a me-too agreement). On October 30, 2002 the Union and Waste Management signed a new collective bargaining agreement and this was presented to the Respondent for execution. The Respondent refused. (This will be discussed below).

(b) Allegations involving Doron Lyn

On May 9, 2002, employee Doron Lyn signed a union authorization card. Lyn testified that on the following day, Wayne Tragni asked him if he signed a union card and he said that he did. Tragni told Lyn that in order for him to keep his job, Lyn would have to call the Union and tell them that he had only worked one night. Later that night, Lyn testified that he heard Damon tell another employee that if he

[3] On September 14, 2002, an arbitrator found that the Company had failed to make payments to the contract's benefit funds and awarded the funds the amount of $168,833. (The Company didn't show up for the arbitration hearing). Thereafter, on March 18, 2003, the United States District Court awarded the funds the amount of $122,109.56 in a default judgment.

was forced to put the employees into the Union, he would let everyone go.

On or about May 10, 2002, Wayne asked Lyn if he had made up his mind about calling the Union and Lyn said that he would stick with the Union. Wayne Tragni responded that he would be force to let Lyn go. When Lyn said he was not getting paid enough money and got no benefits, Wayne said that he would give him a salary increase and that Lyn should think about it.

On the night of May 12, 2002, Wayne Tragni told Lyn that he didn't have to come to work. Lyn asked if he was being let go because he wanted to join the Union. Wayne said that he was.

Subsequently, the Union filed a grievance alleging that Lyn had been discharged without good cause. An arbitration hearing was held and after the Respondent did not appear, the arbitrator upheld the grievance. Notwithstanding the award, Lyn has not received the back pay awarded.

With respect to the allegations involving Doron Lyn, it is concluded that the Respondent violated Section 8(a)(1) of the Act by; (a) unlawfully interrogating him about his union support and activities [4]; and (b) by threatening him and others with discharge because they signed union authorization card or otherwise might support the Union. [5] It is not however, alleged here that the Respondent violated Section 8(a)(3) of the Act by discharging Lyn, presumably because Lyn was the beneficiary of a favorable arbitration award which can be enforced in a separate judicial proceeding.

(c) Allegations involving employees
Siao, Blyden, Ford, Sarach and Hynes

In February 2003, there was another surge of interest in joining the Union by certain of the Company's employees. On February 10, 2003, employees Blyden, Siao and Sarach went to the Union's office and explained that they were not getting any of the contract wages or benefits. They also reported that they had been told by Wayne Tragni that they should walk away whenever they saw a union representative, and that if they did talk to a union representative, they should say that they were not employed by the Respondent. At this meeting, Blyden and Siao signed union cards.

On February 13, 2003, Mike Spiatto, from the Union's Benefit Funds, sent a bill to the Respondent for $98,892.25 representing monies owed on behalf of Blyden and Siao.

On February 21, 2003, Jan Sarach convinced a former employee, Domingo Hynes, to go to the Union's office. Hynes did so and signed a union card.

On February 24, 2003, Spiato sent another bill for $30,964.25 representing money owed on behalf of Domingo Hynes.

On March 5, 2003, the Fund's administrator notified the Company that it owed the amount of $309, 854.75 on behalf of various employees including Blyden, Siao and Hynes. That this notification was received by the Company is evidenced by a signed postal receipt.

Sometime in March 2003, Wayne Tragni called Hynes and asked if he wanted to come back to work. Hynes agreed. On the following day, however, Wayne called Hynes and said that he had received

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[4] *Rossmore House*, 269 NLRB 1176 (1984), enf'd 760 F.2d 1006 (9th Cir. 1985); *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985).

[5] *Delta Mechanical, Inc.*, 323 NLRB 76, 78 (1997);

a letter showing that Hynes had signed for the Union and asked him why. (I suspect that Wayne offered the job to Hynes immediately before he got the Fund's letter dated March 5 and that this conversation with Hynes took place shortly after he received that letter). Hynes told Wayne that he had signed for the Union and asked when he could go to work. Wayne Tragni said he would call Hynes; but not surprisingly, he never did.

On March 9, 2003, Wayne Tragni called Siao and asked him why he had signed with the Union.

On March 10, Wayne Tragni again called Siao and told him that he should call the Union and say that he never heard of the Company. Wayne told Siao that unless he did so, he'd be sorry.

On March 10, 2003, Wayne Tragni called Blyden and said that he had stabbed him in the back by signing with the Union. Wayne said that everyone would have their hours reduced, or that the business would be sold and everyone laid off.

On March 11, 2003, Wayne Tragni told Siao that he and the other employees had gone against him by going to the union hall and signing.

On March 11, 2003, another employee, Freddie, told Sarach that Wayne had told him that Sarach was supposed to stop for good and that something had happened with Blyden as well.

On March 11, 2003, Wayne Tragni left a message on Blyden's phone to the effect that he should not come to work until he heard from Wayne. Blyden called union agent Campbell who convinced Wayne to put Blyden back to work.

On March 12, 2003, Sarach called Wayne Tragni on the phone and was told that he was no longer working for the Company. Thereafter, the Company never called Sarach to go to work and did not pay him for the day that he worked on March 10, 2003.

On March 14, 2003, Wayne Tragni told Blyden, in a telephone conversation, that he no longer was needed and that the Union should pay Blyden for the 2 days that he had worked on March 12 and 13. Wayne also told Blyden that he should tell his friend, Vernon Ford, that he no longer was needed. (At the time of the hearing in this matter, Ford was the involuntary guest of a State facility. He therefore was unavailable to testify).

On March 15, 2003, Wayne, among other things, told Siao that Domingo Hynes wasn't coming back; that Sarach was going to learn a lesson the hard way; that he had Don Blyden's number; and that Siao's days were numbered.

Of the group of employees who had signed union cards, Siao continued to work until about May 3, 2003.

On May 1, 2003, at a meeting between the Union's representatives and Wayne Tragni and his attorney Timothy Coon, the Union attorney, in addition to demanding that the Company sign a new contract, told the Employer that Siao have given an affidavit to the NLRB in support of the Union's unfair labor practice charges.

On May 3, 2003, Siao arrived at work at his normal time and place but found that all of the trucks had left without him. On May 4, Siao decided to show up a half hour early but still he found that the trucks had already left without him. On May 5, 2003, Siao approached in Chinatown, a driver named Freddy who told him that Wayne had given him orders not to put Siao to work unless no one else showed up or unless there was a dire emergency. At this point, Siao noticed and pointed out to Freddy that there

were new helpers on the truck.

From May 3 to May 17, Siao was not able to get any work from the Respondent. For a couple of days after May 17, Freddie surreptitiously used Siao as a helper but on the second day, Siao was replaced by another helper after working for only an hour and a half.

During the month of May, 2003, Siao made numerous calls to Wayne Tragni who either refused to respond or who hung up immediately. On one occasion, Siao saw Wayne in Chinatown, but when he approached Wayne's car, he rolled up his windows and left. Finally, at the end of the month, Siao came to the not unreasonable conclusion that the Company was not going to use his services anymore, even though no specific words were spoken that amounted to an explicit discharge. *American Linen Supply Co*., 297 NLRB 137, 145 (1989) enf'd 935 F.2d 1428 (8th Cir. 1991). Thus, in *Ridgeway Trucking Co*., 243 NLRB 1048-49 (1979), the Board stated:

> The test for determining "whether (an employer's) statements constitute an unlawful discharge depends on whether they would reasonably lead the employees to believe that they had been discharged, " and " the fact of discharge does not depend on the use of formal words of firing... It is sufficient if the words or actions of the employer would logically lead a prudent person to believe his tenure had been terminated.

With respect to the events described above, it is my opinion, that they were triggered by the fact that certain of the employees went to the Union which resulted in a communication from the Union, dated March 5, 2003, (and probably received on March 6 or 7), which demanded the payment of withheld funds on behalf of the Respondent's employees.

In the case of Siao, I conclude that he was, in fact, discharged on May 3, 2003 and that this was triggered by the fact that on May 1, 2003, the Union demanded that the Company execute a contract and also informed the Employer that Siao had given testimony in support of the Union's unfair labor practice charge. I therefore make the following conclusions;

1. The Respondent violated Section 8(a)(1) of the Act by illegally interrogating employees regarding their union membership and/or activities.

2. The Respondent violated Section 8(a)(1) by threatening employees with reprisals including threats of job loss and threats to sell the business.

3. The Respondent violated Section 8(a)(1) & (3) of the Act by refusing to hire and withdrawing a job offer made to Domingo Hynes because he signed a union card and/or because the Union was seeking to enforce the collective bargaining agreement on his behalf by claiming benefit fund payments during the period of time that he had previously been employed by the Respondent.

4. The Respondent violated Section 8(a)(1) & (3) of the Act by discharging employees Don Blyden, Vernon Ford and Jan Sarach because they signed union cards and/or because the Union was seeking to enforce the collective bargaining agreement on their behalf by claiming benefit fund payments during the period of time that they had been employed by the Respondent.

5. The Respondent violated Section 8(a)(1), (3) & (4) of the Act by discharging Siao because he signed a union card, and/or he gave testimony to the Board in an unfair labor practice investigation.

(d) The 8(a)(5) Allegations

As noted above, a contract between the Union and the Respondent, signed by Irene Tragni,

expired on July 31, 2002. However, in September 2002, Wayne Tragni executed an agreement which stated that the Respondent agreed to be bound by a collective bargaining agreement negotiated between the Union and another employer called Waste Management of New York. On October 30, 2002, the Union and Waste Management signed a new collective bargaining agreement and this was presented to the Respondent for execution.

On April 10, 2003, at a meeting between the Union's representatives and Wayne Tragni and Timothy Coon, the latter stated that the signing of the agreement was contingent upon resolving some open issues. The Union's attorney, Michael Lieber responded that because of the September agreement, there were no open issues that would allow the Respondent to refuse to execute the new contract. Wayne Tragni asserted that he didn't understand what he was signing when he executed the September document. When Coon tried to assert that certain employees including Siao were not employees of the Company, the Union rejected that contention as preposterous. At the conclusion of the meeting, Lieber asked for the names and addresses of the Company's drivers and helpers along with their dates of hire.

On April 14, 2003, Lieber mailed to Coon a variety of documents including the September 2002 agreement executed by Wayne Tragni and a copy of the new collective bargaining agreement that the Union was seeking to have executed.

Another meeting was held on May 1, 2003, where Lieber again demanded that the Company execute the new agreement. At this meeting, he was accompanied by Siao but this employee left the meeting after the Company objected to his presence. After some give and take about signing the contract and Coon's goal of settling a lot of other cases, Lieber said that the execution of the contract was not contingent on any other matter. Coon responded that the Company was not prepared to execute the new contract or to provide the information requested.

As of the date of the hearing, the Respondent has neither executed the new contract nor furnished the information requested.

Section 8(d) of the Act states:

> For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession....

In *H.J. Heinz Co. v NLRB* 311 U.S. 514 (1941), the Supreme Court held that once the parties have reached an oral agreement, the employer may not refuse to sign it.

> The freedom of the employer to refuse to make an agreement relates to its terms in matters of substance and not, once it is reached, to its expression in a signed contract, the absence of which, as experience has shown, tends to frustrate the end sought by the requirement for collective bargaining. A businessman who entered into negotiations with another for an agreement having numerous provisions, with the reservation that he would not reduce it to writing or sign it, could hardly be thought to have bargained in good faith. This is even more so in the case of an employer who, by his refusal to honor, with his signature, the agreement which he has made with a labor organization, discredits the organization, impairs the bargaining process and tends to frustrate the aims of the statute to secure industrial peace through collective bargaining.

Further, where an employer executes a "me-too" agreement, the failure to execute the full collective bargaining agreement once the exemplar employer has reached full agreement with the Union, constitutes a violation of Section 8(a)(5) of the Act. *B & M Linen Corp*., 338 NLRB No. 2, pp. 11-12 (2002). Additionally, the Respondent's failure to abide by the terms and conditions of the new collective bargaining agreement is likewise a violation of Section 8(a) (5) of the Act.

Finally, information describing the names, addresses and dates of hire of bargaining unit employees is presumptively relevant information. This means that when requested, the Company was obligated to turn this information over to the Union. *NLRB v Truitt Mfg. Co*., 351 U.S. 149 (1956); *NLRB v Boston Herald-Traveler Corp*., 209 NLRB F.2d 134 (1st Cir. 1954); *Gloversville Embossing*. 314 NLRB 1258 (1994). *Toms Ford Inc*., 253 NLRB 888, 895 (1990); *Georgetown Associates d/b/a Georgetown Holiday Inn*, 235 NLRB 485, 486 (1978).

Conclusions of Law

1. By interrogating employees about joining or supporting Local 813, International Brotherhood of Teamsters, AFL-CIO, the Respondent violated Section 8(a)(1) of the Act.

2. By threatening employees with layoffs, discharge, business closure or other reprisals, because they joined or supported the Union, the Respondent violated Section 8(a)(1) of the Act.

3. By discharging employees because they joined or supported the Union, the Respondent violated Section 8(a)(1) & (3) of the Act.

4. By refusing to hire an employee because he joined or supported the Union, the Respondent violated Section 8(a)(1) & (3) of the Act.

5. By discharging an employee because he gave an affidavit to the National Labor Relations Board, in support of unfair labor practice charges, the Respondent violated Section 8(a)(1) (3) & (4) of the Act.

6. By failing to pay employees for time worked because they joined or supported the Union, the Respondent violated Section 8(a)(1) & (3) of the Act.

7. By refusing to execute a full collective bargaining agreement with the Union, after signing a "me too" agreement, the Respondent violated Section 8(a)(1) & (5) of the Act.

8. By failing to abide by the terms and conditions of the aforesaid collective bargaining agreement on behalf of its employees within the appropriate bargaining unit, the Respondent violated Section 8(a)(1) & (5) of the Act.

9. By failing to provide relevant information such as the names, addresses and dates of hire of its bargaining unit employees, the Respondent violated Section 8(a)(1) & (5) of the Act.

10. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) & (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of

the Act.

The Respondent having discriminatorily discharged Don Blyden, Jon Sarach, Vernon Ford and George Siao, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of their discharge to the date of their reinstatement or a valid reinstatement offer, less any net interim earnings, as prescribed in *F.W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987). See also *Florida Steel Corp*., 231 NLRB 651 (1977). [6]

The Respondent having discriminatorily refused to hire Domingo Hynes, must offer him employment and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from the date it retracted a previously made offer to the date of his employment or to the date when a valid offer of employment is made, less any net interim earnings, as prescribed in *F.W. Woolworth Co*., supra, plus interest as computed in *New Horizons for the Retarded,* supra. See also *Florida Steel Corp*., supra.

As I have concluded that the Respondent has refused to execute an agreed upon contract, I shall recommend that it be ordered to do so if requested by the Union. In this regard, the agreement would be one containing the terms and conditions set forth in the Union's collective bargaining agreement with Waste Management.

It is also recommended that to the extent the Respondent has not made wage payments to its bargaining unit employees or other contributions to union benefit funds on behalf of its employees in the amounts required by the aforesaid agreement, that the Respondent make its employees whole by paying them the wages that they would have received under its terms, [7] and paying to the contract benefit funds, on their behalf, the full amounts required by said agreement. Such backpay shall be made in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970). With respect to any wages owed under the agreement, interest should be computed in accordance with *New Horizons for the Retarded,* 283 NLRB 1173 (1987). However, with respect to fund contributions required under the contract, interest should be computed in accordance with *Merriweather Optical Co*., 240 NLRB 1213 (1979). [8]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended: [9]

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[6] Vernon Ford's entitlement to reinstatement and backpay will undoubtedly be affected by his unavailability, (for at least some time), for employment.

[7] This would be difference between what the employees should have earned under the terms of the new collective bargaining agreement and what they actually earned or would have earned. In the case of those employees who I have concluded were illegally discharged or refused employment, their backpay should be determined by applying to the backpay period, the wages and benefits that they would have received had they continued to be employed under the terms and conditions of the new contract.

[8] There was no evidence presented that any employee was denied medical benefits because of any default in payments by the employer to the Union's welfare fund. However, in order to avoid any potential problems, I shall also recommend, in accordance with *Kraft Plumbing and Heating Inc*., 252 NLRB 891, fn. 2 (1980), that the Respondent, reimburse any employee covered by the contract for any medical expenses which may have ensued because of the Respondent's failure to pay the full amount of the welfare fund contributions required under the new contract as well as any premiums employees may have paid to third party insurance companies to provide substitute medical insurance.

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all

Continued

ORDER

The Respondent, Chinatown Carting Corp., its officers, agents, successor, and assigns, shall

1. Cease and Desist from

(a) Interrogating employees about their membership in or support for Local 813, International Brotherhood of Teamsters, AFL-CIO, or any other labor organization.

(b) Threatening employees with layoff, discharge, business closure or any other reprisals, because they join or support the Union or any other labor organization.

(c) Discharging employees because they join or support the Union or any other labor organization.

(d) Refusing to hire employees because they join or support the Union or any other labor organization.

(e) Discharging employees because they give testimony or affidavits to the National Labor Relations Board.

(f) Failing to pay employees for time worked because they join or support the Union.

(g) Refusing to execute a full collective bargaining agreement with the Union, after signing a "me too" agreement.

(h) Failing to abide by the terms and conditions of the aforesaid collective bargaining agreement on behalf of its employees within the appropriate bargaining unit.

(i) Failing to provide to the Union, relevant information such as the names, addresses and dates of hire of its bargaining unit employees.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Don Blyden, Jon Sarach, Vernon Jordan, George Siao and Domingo Hynes, full reinstatement to their former jobs, (or in the case of Hynes, to the job previously offered to him), or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the Remedy section of this decision.

(b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful actions against Don Blyden, Jon Sarach, Vernon Jordan, George Siao and Domingo Hynes and within 3 days thereafter, notify them in writing, that this has been done and that the discharges will not be used against them in any way.

(c) On request of the Union, execute forthwith the collective bargaining agreement that was agreed to and presented to the Respondent in April, 2002.

objections to them shall be deemed waived for all purposes.

(d) On the request of the Union give retroactive effect to the terms and conditions of the aforesaid contract, and make whole its employees and the Union for any losses they may have suffered by reason of the Respondent's failure to execute and comply with the Agreement in the manner set forth in the Remedy Section of this Decision.

(e) Upon request of the Union, furnish the names, addresses and dates of hire of all employees who are in appropriate collective bargaining unit which consists of:

> All chauffeurs, helpers, mechanics, and welders of the Employer, except those employees not eligible for membership in the Union in accordance with the provisions of the Labor Management Relations Act of 1947 as amended, with respect to wages, hours and other working conditions. The area of work includes, but not by way of limitation, loading and/or removing garbage, rubbish, cinders, ashes, waste materials, building debris and similar products.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Westchester, New York, copies of the attached notice marked "Appendix." [10] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition, since the evidence shows that the employees do not often go to the Company's home facility, but rather are picked up at various locations in New York City, the Respondent shall mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since April 24, 2002.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

_____

Raymond P. Green
Administrative Law Judge

[10] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT interrogate employees about their membership in or support for Local 813, International Brotherhood of Teamsters, AFL-CIO, or any other labor organization.

WE WILL NOT threaten our employees with layoff, discharge, business closure or any other reprisals, because they join or support the Union or any other labor organization.

WE WILL NOT discharge our employees because they join or support the Union or any other labor organization.

WE WILL NOT refuse to hire employees because they join or support the Union or any other labor organization.

WE WILL NOT discharge our employees because they give testimony or affidavits to the National Labor Relations Board.

WE WILL NOT fail to pay our employees for time worked because they join or support the Union.

WE WILL NOT refuse to execute a full collective bargaining agreement with the Union, after signing a "me too" agreement.

WE WILL NOT fail to abide by the terms and conditions of the aforesaid collective bargaining agreement on behalf of its employees within the appropriate bargaining unit.

WE WILL NOT fail to provide to the Union, relevant information such as the names, addresses and dates of hire of our bargaining unit employees.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the rights guaranteed to them by Section 7 of the Act.

WE WILL offer Don Blyden, Jon Sarach, Vernon Jordan, George Siao and Domingo Hynes, full reinstatement to their former jobs, (or in the case of Hynes, to the job previously offered to him), or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole for any loss of earnings and other

benefits suffered as a result of the discrimination against them.

WE WILL remove from our files any reference to the unlawful actions against Don Blyden, Jon Sarach, Vernon Jordan, George Siao and Domingo Hynes and within 3 days thereafter, notify them in writing, that this has been done and that the discharges will not be used against them in any way.

WE WILL upon the request of the Union, execute forthwith the collective bargaining agreement that was agreed to and presented to us in April, 2002.

WE WILL upon the request of the Union, give retroactive effect to the terms and conditions of the aforesaid contract, and make whole our employees and the Union, for any losses they may have suffered by reason of our failure to execute and comply with the aforesaid Agreement

WE WILL upon request of the Union, furnish the names, addresses and dates of hire of all employees who are in appropriate collective bargaining unit, which consists of:

> All chauffeurs, helpers, mechanics, and welders of the Employer, except those employees not eligible for membership in the Union in accordance with the provisions of the Labor Management Relations Act of 1947 as amended, with respect to wages, hours and other working conditions. The area of work includes, but not by way of limitation, loading and/or removing garbage, rubbish, cinders, ashes, waste materials, building debris and similar products.

Chinatown Carting Corp.

(Employer)

Dated _____ **By** _____

(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

26 Federal Plaza, NY 10278–0104, Telephone 212–264–0346. Hours: 9 a.m. to 5:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER 212-264-0346.